

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MADHU JAIN,

Plaintiff,

v.

A CAPE ANN WHALE WATCH, INC.,

Defendant.

CIVIL ACTION NO. 05-11267-MEL

MOTION TO QUASH SUBPOENA

Defendant, A Cape Ann Whale Watch, Inc, (“Cape Ann”), hereby moves to quash the subpoena served by the plaintiff, calling for the bringing of Cape Ann’s passenger gangway to Boston.

Cape Ann uses this gangway to board its passengers every day of the week. Bringing it to trial would force it to shut down its business, including trips for which many people have already paid. There is no alternative gangway.

Moreover, there would be no benefit to doing this. The gangway by itself would reveal nothing more than would be done by a photograph of it would do.

Moreover, to the extent that plaintiff claims some attribute of its surface would be demonstrated by being seen “in person,” this is a meritless claim. Plaintiff has no expert who has conducted any *test* about how this particular diamond-plate surface compares with any other such diamond-plate surface, and bare visual inspection by laypeople would be insufficient to determine any friction characteristics of the walking surface.

In addition, any viewing of the gangway in Boston is “out of context,” and by itself can reveal nothing about how the gangway interfaced with the vessel itself.

Finally, this is a bizarre request. Slip-and-fall cases typically do not involve bringing the walking surface itself to court — nobody excavates department store floors and brings them to court, nor transit system staircases, nor walking surfaces on commuter trains, etc. The condition of the surface is established by photos and/or expert testimony.

Plaintiff was afforded the opportunity to photograph this gangway, and was offered the opportunity for her expert to have access to the gangway. Whatever use was made of these opportunities is a matter for the plaintiff to work with. But her failure to have done her homework is not a proper basis to shut down Cape Ann's business.

WHEREFORE, Cape Ann respectfully prays that the subpoena in question be quashed.

CERTIFICATE OF SERVICE: Undersigned counsel hereby certifies that s/he has this day provided a true copy of this document to all counsel of record and all parties appearing pro se (if any) by the method indicated alongside their respective names as shown below.

Dated: June 8, 2007

served upon:

Jeffrey C. Coniaris, Esq. *(By Facsimile & 1st Class Mail)*
84 State Street, 6th Floor
Boston, Massachusetts 02109
Tel. (617) 720-5888
Fax. (617) 720-2164

A CAPE ANN WHALE WATCH, INC.

By its attorneys,

/s/ Michael Rauworth

Michael J. Rauworth, BBO# 547711

CETRULO & CAPONE LLP

World Trade Center East

Two Seaport Lane — 10th Floor

Boston, Massachusetts 02210

Tel: (617) 217-5500; fax: 617-217-5200